

STATE OF MICHIGAN
COURT OF APPEALS

GRAND TRUNK WESTERN RAILROAD, INC.,

Plaintiff-Appellee,

v

AUTO WAREHOUSING COMPANY,

Defendant-Appellant.

FOR PUBLICATION

June 10, 2004

9:00 a.m.

No. 244246

Wayne Circuit Court

LC No. 00-017068-CK

Official Reported Version

Before: Neff, P.J., and Wilder and Kelly, JJ.

WILDER, J. (*concurring in part and dissenting in part*).

While I agree with and join much of the analysis by the majority, I respectfully dissent from section VII(B) of the majority's opinion. I would conclude that there is an issue of fact regarding the reasonableness of the settlement reached by plaintiff with Terry Thomas and would remand for trial on this question.

I agree with the majority's conclusion that "the analysis of the reasonableness of a settlement [does not] include plenary consideration of liability issues in the underlying litigation." *Ante* at _____. However, "the amount paid in settlement of the claim in light of the risk of exposure" is very much a fact to be considered in determining the reasonableness of a settlement. *Ford v Clark Equip Co*, 87 Mich App 270, 278; 274 NW2d 33 (1978). Before the settlement between Thomas and plaintiff, defendant asserted that only \$50,000 of the proposed settlement was properly allocable as damages for Thomas's 1999 injuries. In opposing summary disposition in the present case, defendant offered direct evidence of Thomas's injuries and his ability to recover from his injuries to contradict the opinion of the independent facilitator and Thomas's economic expert that damages were appropriately allocated in the amounts of \$100,000 for injuries Thomas suffered in 1997, and \$625,000 for his 1999 injuries. Because the trial court was required to consider this evidence concerning damages in the light most favorable to defendant, *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), I would conclude that while defendant may not challenge plaintiff's potential liability to Thomas for his 1999 injuries, defendant has raised a triable issue of fact regarding the reasonableness of the settlement amount allocated to each claim of injury that precludes summary disposition.

/s/ Kurtis T. Wilder